IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 28 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PREMSINGH BISHMSINGH SIKH

Versus

KAMINIBEN R MALIK

Appearance:

1. Criminal Revision Application No. 28 of 2002

MR BC DAVE for Petitioner No. 1

MR SN SINHA for Respondent No. 1

MR VH DESAI for Respondent No. 1

MR LAXMANBHAI A AMAR for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 07/05/2003

C.A.V. JUDGEMENT

1. Heard Mr.B.C.Dave, learned advocate for the petitioner, Mr.S.N.Sinha learned advocate for the respondent no. 1 and Mr.A.J.Desai, learned A.P.P.for the State.

2. The respondent no. 1 by name Kaminiben R Mallik filed a private complaint before the learned Chief Metropolitan Magistrate, Ahmedabad city under Secs. 451,341,467,468,471,474,201,504,506(2), 380, 120(B), 114 and 34 of the Indian Penal Code against the present petitioner and other accused by name Subbabhai Jabbarbhai Shaikh on the ground that the petitioner along with said Subbabhai prepared false documents and entered into the house of the complainant and committed the aforesaid offences.

3. Learned Metropolitan Magistrate sent the complaint for investigation under sec. 156(3) of the Criminal Procedure Code to Bapunagar police station and after the investigation, chargesheet has been filed against the petitioner and one another accused by name Subbabhai Jabbarbhai Shaikh in the court of learned Metropolitan Magistrate, Ahmedabad city u/s 451,467,468,471,474, 504,506(1), 120(B) and 114 of the Indian Penal Code on 13.08.1997 and also framed the charge in the said criminal case no. 631/97 against the petitioner and one Shaikh and the matter was kept for evidence. It is the case of the petitioner that the present respondent no. 1 through A.P.P. gave an application in the court of Chief Metropolitan Magistrate in criminal case no. 631/97 under the provisions of Sec. 173(8) of the Cr.P.C. for further investigation of the case on 20.01.98. The said application was rejected by order dated 5.10.98 by the order of the learned Metropolitan Magistrate, Ahmedabad. Dissatisfied with the said order, the present respondent no. 1 preferred criminal revision application no.6/99 before the Additional City Sessions Judge, Ahmedabad which was allowed by order dated 1.4.99 in absence of the present petitioner and another accused stated in the chargesheet. As per the said order, the learned Chief Metropolitan Magistrate by order dated 29.6.99 ordered reinvestigation to the Ahmedabad city crime branch. The said order of the learned Additional City Sessions Judge and the consequent order of the learned Chief Metropolitan Magistrate directing reinvestigation are under challenge in this revision application.

4. At the time of hearing of this revision application, learned advocate for the petitioner

submitted that the provision of Sec. 173(8) of the Cr.P.C. makes it clear that an application can be made by the officer in-charge of the police station to the Magistrate by submitting a further reports regarding such evidence in the form prescribed and under no circumstances, the complainant has right to give such an application for reinvestigation. Therefore, such application is not maintainable.

5. It is the case of the petitioner that the order passed by the learned Chief Metropolitan Magistrate was an interlocutory order and was challenged by the complainant in a revision application without making the accused as party. According to him, such application is not maintainable. Therefore, the order passed in the revision application for further investigation and the consequential order by the Chief Metropolitan Magistrate are required to be quashed and set aside by this Court. In support of his submissions, he has relied on the judgment of this court in Criminal Revision Application No. 93/01 (Coram: D.P.Buch, J) dated 29.06.01 and the judgment reported in 2001 (7) SCC 401.

6. It is the case of the petitioner that the respondent no.1 has no locus to file the revision application against the order of the Chief Metropolitan Magistrate and that too without making the present petitioner-accused as party. The petitioner-accused who are put in advantage situation while rejecting the application under Sec. 173(8) of the Cr.P.C. cannot be put in disadvantage position without making the petitioner-accused as party and therefore great prejudice is caused to the present petitioner. Learned advocate for the petitioner, reading Sec. 319 of the Cr.P.C. submitted that during the course of trial, the evidence is collective then the court has power to proceed against the persons who are not shown in the chargesheet. Therefore, also the order passed in revision application is required to be quashed and set aside.

7. Lastly, it was submitted that the order passed by the learned Additional City Sessions Judge, Ahmedabad and consequent order passed by the learned Chief Metropolitan Magistrate are bad in law and required to be interfered by this court by allowing this revision application.

8. Against the aforesaid submissions, learned advocate for the respondent no. 1 Mr.Sinha has submitted that there is no embargo in Sec. 173(8) of the Code that private party cannot give application before the trial court or any other court, if the order passed is perverse

and causing miscarriage of justice. In his submissions, learned advocate for the respondent no. 1 submitted that it is now well settled that in deciding whether an order challenged is interlocutory or not as for Sec. 397(2) of the Code, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in section 397(2) of the Code.

9. Learned advocate for the respondent no. 1 has also submitted that merely because the State has not challenged the same before appellate Court, it would not be a ground for this Court not to entertain any application filed at the instance of private party. The present respondent No.1 is none else but the original complainant and except the complainant who else will come before the Court for making his grievance.

10. In support of his submissions, Mr.Sinha learned advocate for the respondent no. 1 has relied on as much as 11 authorities are as under :

1. Chainnaswami Reddy V.s State of A.P. reported in AIR 1962 SC 1788.
2. Krishnakant, Revisionist V/s Dilipkumar & Ors. reported in 1984 Cri.L.J. 1003.
3. R.Rathinam V/s State & Ors. reported in AIr 2000 SC 1851.
4. C.B.I. and another V/s Rajesh Gandhi & Ors. reported in 1997 Cri.L.J. 63.
5. Pranavkumar Mitra V/s State of W.B. reported in AIR 1959 SC 144.
6. Mavji Bhai Karasan Bhai Patel V/s State of Gujarat order dated 24.10.02 for C.R.A.215/00.
7. Bhaskar Industries Ltd. V/s Bhiwani Denim reported in (2001) 7 SCC 401.
8. Kathi Kalu Raning V/s State 1993(1) GLR 561.
9. Chandulal Harilal Lodhiya V.s State 1993(1) GLR 596.
10. Mahendra P Desai V/s State 1985(2) GLR 1056.
11. H.N.Rishbug V/s State of Delhi 1955 SCR 1150.

11. Mr.Desai, learned advocate for the respondent nos. 2 & 3 has submitted in support of the petitioner on the point of right to file revision application before the appellate Court that police officer in charge of the police station and not that of complainant. He has further relied on the observation made in the judgment

and order of Addl. Sessions Judge, Ahmedabad, more so, on para 4 of the order dated 1.4.99 and submitted that the revision application deserves to be dismissed, however, he submitted that he has no objection if the matter is remanded back to the police for an investigation by setting aside the order of the learned Addl. Sessions Judge.

12. I have heard the learned advocates for the parties and gone through the authorities cited by the learned advocates.

13. So far as the maintainability is concerned, in case of Krishankant, Revisionist (supra) has observed in para 5 as under :

> " There can be no denial that in cases initiated on police reports, it is the State, who is the aggrieved party and ordinarily a complainant has no locus standi to come to Court. But an order like the one under consideration in this revision is clearly perverse and causes miscarriage of justice, hence, requires interference by the High Court. In the case of Bhagwan Singh V/s State of U.P. (1983 All Cri C 347) and Gajadharsingh V/s Mahesh Chandra 1981 (All Cri C 66 (SOC) : (AIR 1981 NOC 206) it has been held that if there is manifest error on point of law causing miscarriage of justice this Court would not hesitate in exercising its revisional powers even at the instance of a private party. It is not usual for the High Court to entertain revisional application filed by the complainant direct but after it has been admitted it must be disposed of on merits."

14. In case of K.Chinnaswamy Reddy (supra), the Apex Court has come to the conclusion that "it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal ; but this jurisdiction should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on the point or law and consequently there has been flagrant miscarriage of justice."

15. In case of R.Rathinam (supra), the Apex Court has come to the conclusion from the facts and circumstances of the case that the power so vested in the High court can be invoked either by the State or by aggrieved party

or by the High Court suo motu. If so, any members of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu.

16. There is also contention raised by the learned advocate for the petitioner which investigation agency should investigate his case. In case of Rajesh Gandhi (supra), the Apex Court has come to the conclusion that :

> " The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with."

17. In case of Mavjibhai Karsanbhai Patel (supra), this court (Coram :A.L.Dave, J) has discussed the case of Randhir Singh Rana V/s The State (Delhi Administration), AIR 1997 SC 639 wherein the Court considered the case of Tula Ram V/s Kishor Singh AIR 1977 SC 2401 and referred to para 14 thereof. The Apex Court culled out the propositions as stated in the said paragraph. In aforesaid case of Randhir Singh Rana, the Apex Court after considering various judgments in para 11 has observed that "the Magistrate of his own' cannot order for further investigation after taking cognizance and then went on to set aside the order of the Magistrate as that was done by the Magistrate of his own'. The proposition, thus, laid down by the Apex Court in Randhir Singh Rana's case is that, after taking cognizance, the Magistrate cannot, of his own order further investigation in the case. Differently put, there cannot be any bar to the Court directing further investigation, if indulgence is sought by giving an application. The said judgment does not impose any such bar."

18. In case of Shantilal Jethalal Shah, a learned Single Judge of this Court made following observations :

> " In my view, there is no substance in the contention raised by the learned counsel for the respondent no. 2. A bare reading of impugned order says that the direction for further investigation has been given after taking cognizance. The Supreme Court case cited by the learned counsel is not attracted in the facts of the present case as the revisioner has challenged the order with respect to further investigation after cognizance is taken. The contention raised

by the petitioner is squarely covered by the decision of the Apex Court in Randhir Singh Rana's case."

In case of Bhaskar Industries Ltd. (supra), the Apex Court has observed in para 10 as under :

" The above position was reiterated in Rajendra Kumar Sitaram Pande V/s Uttam. Again in K.K.Patel V/s State of Gujarat this Court stated thus : (SCC p.201 para 11) :

" It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (view Amar Nath V/s State of Haryana, Madhu Limaye V/s State of Maharashtra, V.C.Shukla V/s State through CBI and Rajendra kumar Sitaram Pande V/s Uttam). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

18. The aforesaid discussion has been discussed in view of the fact whether the order passed by the learned trial Judge can be said to be interlocutory order or not.

19. In case of H.N.Rishbud and Inder Singh (supra), the Apex Court has observed as under :

" When any breach of the mandatory provisions relating to investigation is brought to the notice of the Court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Sec. 5-A of the Prevention of Corruption (Second Amendment) Act. 1954."

20. In view of the aforesaid circumstances, I am of the opinion that even after the chargesheet is submitted

against the accused, further investigation under Sec. 173(8) of the Criminal Procedure Code can be ordered. In this case also, even though the chargesheet is filed against the accused, no witnesses have been examined. From the papers, it also appears that when the order was passed by the learned Chief Metropolitan Magistrate, Ahmedabad ordering further investigation by the Crime Branch Ahmedabad, some investigation has taken place and in the meantime, the present petitioner obtained injunction from further investigation and served upon the respondent and therefore no further investigation was carried out. In view of the aforesaid circumstances, I am of the opinion that there is no infirmity or illegality in the order passed by the learned Addl. Sessions Judge, Ahmedabad dated 1.4.99 quashing and setting aside the order of the learned Chief Metropolitan Magistrate and ordering further investigation in criminal case no. 631/97 and in pursuance thereof the learned Chief Metropolitan Magistrate, Ahmedabad has ordered to the Crime Branch, Ahmedabad city to carry out further investigation in the case. Therefore, this revision application is devoid of any merits and therefore requires to be rejected. This revision application is accordingly rejected. The order passed in Criminal revision application no. 6/99 on 1.4.99 is confirmed. Interim relief stands vacated. Rule is discharged.

(SHARAD D DAVE, J)

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After the aforesaid order was passed, Mr.B.C. Dave, learned advocate for the petitioner wants to stay the operation of order for eight weeks to approach the higher forum. When I dictating the this order, Mr.S.N.Sinha, learned advocate for the respondent No.1 is not present, therefore, I could not record any opinion of learned advocate for the respondent No.1 regarding the same. However, I thought it fit to stay the order of mine. Hence, interim relief vacated by this Court, is hereby continue till 06.07.2003 with the clear understanding, no further extension shall be granted to the petitioner on this point.

[Sharad D. Dave, J.]

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